



November 6, 2017

The Honorable Triston Cole
S-1389-House Office Building
PO Box 30014
Lansing, Michigan 48933

Re: Amend SB 97 to Require Bonding for the Design and Construction Portion of a P3

Dear Representative Cole:

The Surety & Fidelity Association of America (SFAA), a non-profit corporation, is a licensed rating or advisory organization in all states and is designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. SFAA member companies collectively write the vast majority of surety and fidelity bonds in the United States. The American Insurance Association (AIA) is the leading property-casualty insurance trade organization, representing approximately 320 insurers that write more than \$125 billion in premiums annually. AIA members offer all types of property-casualty insurance, including surety and fidelity bonds. We recommend that surety bonds should be required for the design and construction of any public private partnership (P3) in Michigan and we offer the following amendment to SB 97.

Amendments to Section 11(c):

Revise (c) to refer to portions of the project other than design and construction and create a new paragraph (3) to deal with the design and construction:

(c) **With respect to portions of the qualifying project other than construction, reconstruction, rehabilitation, improvement and repair,** pProvisions requiring that the private party or 1 or more of its prime contractors provide proposal, performance, or payment security. Performance or payment security if required may be in the amounts determined by the public authority and in the form of bonds, guarantees, letters of credit, committed equity, or any other type of financial instrument, or any combination of the foregoing, each as determined by the public authority.

(3) **The public-private agreement shall contain a** pProvision requiring that the private party or 1 or more of its prime contractors provide performance **and** or payment security **bonds as**

required under MCLA Section 129.201 to secure the design, construction, reconstruction, rehabilitation, improvement and repair portions of the qualifying project. The notice requirements, eligible claimants and suit limitations under such bonds shall be governed by MCLA § 129.201 et seq.

Add “and sureties” at the end of Sec.5 (c)(ii)(B)

(ii) Agreements between the public authority and 1 or more of the following:

(A) A private party

(B) A private party’s lenders and sureties

(C) Federal, state and local governments

Government entities in the United States have understood the importance of surety bonds and have required bonding for over a century to provide performance and payment assurance for the nation's infrastructure projects. Although procurement methods have evolve--including the increased use of public-private partnerships (P3s) under consideration in Michigan SB 97--the construction risks remain the same, making surety bonds just as relevant and important today in the P3 legislation in Michigan.

The surety’s underwriting of a bond is crucial to the success of public works projects. The surety provides a bond only to contractors that, after the surety's evaluation, the surety believes are capable of performing the work. The surety examines the contractor's expertise in the work, ability to work in the region where the project is located, all the jobs that the contractor has on-going, overall management and financial standing to complete the contract, including its capital and record of paying its obligations. By issuing a bond, the surety provides the public contracting entity with assurance from an independent third party, backed by the surety's own funds, that the contractor is capable of performing the construction contract.

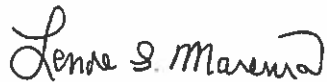
The performance bond guarantees that the public works contract is completed according to its terms. If a performance bond is not provided, the public entity and its taxpayers take on the risk should the contractor default, and bear the burden of re-letting work and paying any excess completion costs. The completion costs for a defaulted project cannot be estimated with certainty, but typically are higher than anticipated. By contrast, when a performance bond is in place, the full amount of the bond is available to complete the construction contract in the event of the contractor’s default.

Public entities often do not have adequate resources to perform all of the tasks that the surety does, either in prequalification of contractors or adjusting the claims that result from a contractor default. Bonding is a cost-effective way for a public entity to protect itself and the project in the event of default.

The payment bonds guarantee laborers, subcontractors, and suppliers that they will get paid for their work and materials. Payment bonds are a critical protection for small, emerging, and minority contractors, since they are more likely to start as subcontractors on projects. Without bonds, subcontractors and suppliers either have to risk losses from nonpayment that they cannot afford, or not work on the public jobs for which they are qualified. Construction is a risky business, and performance and payment assurance is necessary.

A P3 is simply another method to deliver a public works project. Although the public works project in a P3 is not financed initially with public funds, public funds in the form of some future revenue stream (e.g. tolls, availability payments, tax credits, loans) are committed to the private partner upfront in the P3 agreement and ultimately are the source of funding and the profits/return on investment for the private partner and the investors.

The end result of construction in a P3 is for the public use and benefit. The chief interest of a public entity is whether the public works project will be available for the public to use and whether subcontractors and suppliers get paid. That interest is the same no matter if the public works project is delivered through a P3 or a more traditional method of procurement, and as such we believe Michigan SB 97 should require bonding.



Sincerely,

Lenore S. Marema
Vice President—Government Affairs
The Surety & Fidelity Association of America